IN THE CLAIMS

Please amend claims 1 and 11 and add claims 14-20 as follows:

1. (Currently amended) A method of transmitting data comprising the steps of:

determining a first data rate based on a measured first channel condition at a receiver to which data transmission is intended;

~~performing a first data transmission at the first data rate;~~

determining a second data rate based on ~~a measured second channel condition at the receiver if the first data transmission was not successfully received by~~ an attribute of data for transmission to the receiver; and

performing a ~~second~~ data transmission of the data at the second data rate~~, wherein the second data transmission is a re-transmission of the first data transmission~~.

2. (original) The method of claim 1, wherein the first and second data transmissions are identical.

3. (original)The method of claim 1, wherein the first data transmission may be soft combined with the second data transmission.

4.(original) The method of claim 1 comprising the additional step of: receiving, prior to the step of determining the first data rate, a rate indication message indicating the first data rate for the receiver.

5. (original)The method of claim 1 comprising the additional step of: receiving, after the step of determining the first data rate and prior to the step of determining the second data rate, a rate indication message indicating the second data rate for the receiver.

6.(original) The method of claim 1, wherein the first data rate is a higher data rate than a data rate indicated in a received rate indication message.

7.(original) The method of claim 1, wherein the second data rate is a higher data rate than a data rate indicated in a received rate indication message.

8. (original)The method of claim 1 comprising the additional step of: receiving, prior to the step of determining the first data rate, a plurality of rate indication messages indicating the data rates for a plurality of receivers.

9.(original) The method of claim 8 comprising the additional step of: selecting a receiver from the plurality of receivers to which to transmit data using the received plurality of rate indication messages.

10. (original)The method of claim 9, wherein the selected receiver is a receiver associated with a rate indication message indicating a highest data rate.

11.(currently amended) A method of receiving a data transmission comprising the steps of:

receiving at a receiver a first data transmission at a first data rate, wherein the first data rate is determined using a measured first channel condition; and

transmitting a rate indication message indicating a measured second channel condition if the first data transmission was not successfully received at the receiver; and

receiving a second data transmission at a second data rate, wherein the second data rate is based on an attribute of data for transmission to the receiver ~~determined using the measured second channel condition~~.

12.(original) The method of claim 11 comprising the additional step of: storing the received first data transmission if the first data transmission was not successfully received at the receiver.

13.(original) The method of claim 12 comprising the additional step of: soft combining the stored received first data transmission with the received second data transmission.

14. (new) The method of claim 1, wherein the attribute is a size of the data.

15. (new)The method of claim 1, wherein the second data rate is obtained from a lookup table.

16. (new)The method of claim 1, wherein the second data rate is equal to the first data rate.

17. (new) The method of claim 1, wherein the second data rate is a multiple of the first data rate.

18. (new) The method of claim 11, wherein the attribute is a size of the data.

19. (new)The method of claim 11, wherein the second data rate is obtained from a lookup table.

20. (new)The method of claim 11, wherein the second data rate is equal to the first data rate.